

VINCENT A. PEPPER  
ROBERT F. CORAZZINI  
PETER GUTMANN  
JOHN F. GARZIGLIA  
NEAL J. FRIEDMAN  
ELLEN S. MANDELL  
HOWARD J. BARR  
MICHAEL J. LEHMKUHL \*  
SUZANNE C. SPINK \*  
MICHAEL H. SHACTER  
KEVIN L. SIEBERT \*  
PATRICIA M. CHUH  
\* NOT ADMITTED IN D.C.

PEPPER & CORAZZINI  
L. L. P.

ATTORNEYS AT LAW  
1776 K STREET, NORTHWEST, SUITE 200  
WASHINGTON, D. C. 20006  
(202) 296-0600

DOCKET FILE COPY ORIGINAL

E. THEODORE MALLYCK  
OF COUNSEL  
FREDERICK W. FORD  
1909-1986

TELECOPIER (202) 296-5572  
INTERNET PEPCOR@COMMLAW.COM  
WEB SITE HTTP://WWW.COMMLAW.COM

January 29, 1998

RECEIVED

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: MM Docket No. 93-301  
Channel 280C3, Ilwaco, WA  
Elizabeth Farmer, Personal Representative of the  
Estate of Charles Farmer (FCC File No. BPH-920518MA)  
Richard M. Schafbuch (FCC File No. BPH-920521MI)

Dear Ms. Salas:

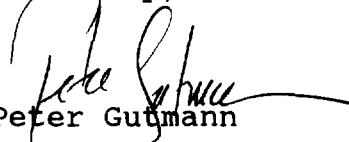
Transmitted herewith on behalf of the referenced applicants are an original and six copies of a Joint Request for Approval of Settlement Agreement in the captioned proceeding.

This submittal consists of the Joint Request executed by the parties' respective counsel and the Settlement Agreement executed by the respective parties. We respectfully note that Section 6 of the Settlement Agreement contains representations under penalty of perjury as to the matters required by Section 73.3525 of the Commission's rules.

We respectfully request that this material be directed to the attention of Judge Richard L. Sippel, whom we understand has been assigned this case following the retirement of Judge Luton.

Should any question arise concerning this material, please communicate directly with this office, with respect to matters involving Mr. Schafbuch, or with Richard J. Hayes, Jr., Esquire, 13809 Black Meadow Road, Spotsylvania, Virginia, 22553; (504) 972-2690 with respect to matters concerning Mrs. Farmer.

Sincerely,

  
Peter Gutmann

Enclosures

cc w/encl.: Richard J. Hayes, Jr., Esq.

No. of Copies rec'd  
026

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON DC 20554

DOCKET FILE COPY ORIGINAL

IN RE APPLICATIONS OF:

CHARLES A. FARMER

RICHARD M. SCHAFBUCH

FOR A NEW FM STATION CONSTRUCTION PERMIT  
CHANNEL 280C3, ILWACO, WASHINGTON

FCC FILE NO. BPH-920518MA

FCC FILE NO. BPH-920521MI

MM DOCKET NO. 93-301

TO: HONORABLE RICHARD SIPPEL  
ADMINISTRATIVE LAW JUDGE

JOINT REQUEST  
FOR APPROVAL OF SETTLEMENT AGREEMENT

Comes Now, Elizabeth A. Farmer, Personal Representative of the Estate of Charles Farmer ("Farmer")<sup>1</sup>, and Richard M. Schafbuch ("Schafbuch") (hereinafter the "Parties"), through counsel, with a request for a waiver of the Commission's Rules regarding limitations on payments to dismissing applicants in universal settlements. Accordingly, the parties respectfully submit their Joint Request for Approval of Settlement Agreements.

The Parties have reached a Settlement Agreement ("Agreement") which, if approved, will achieve a universal settlement of this proceeding, in which applications for a new commercial FM broadcast station construction permit on Channel 280C3, at Ilwaco, Washington ("Station") have been filed. The Agreement is attached hereto in *Exhibit A*.

Farmer has agreed to dismiss her application for a new FM Broadcast Station Construction Permit on channel 280C3 at Ilwaco, Washington in exchange for consideration as outlined in the Settlement Agreement with Schafbuch. The Settlement Agreement requires Schafbuch to pay cash consideration to Farmer. Schafbuch's obligation to pay the cash consideration to Farmer is specifically conditioned upon receipt of "finality" of the FCC's Order granting this Settlement Agreement and the new FM Application of Schafbuch at Ilwaco, Washington..

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<sup>1</sup> By "Order", released September 30, 1997, Administrative Judge Edward Luton Granted a Petition for Leave to Amend and Accepted an Amendment to the Application of Charles Farmer to substitute Elizabeth Farmer, Personal Representative of the Estate of Charles Farmer, as the applicant in this proceeding.


The Settlement Agreement contains statements under penalty of perjury by each of the Parties, as required by Section 73.3525(a) of the Commission's Rules, that: (1) their applications were not filed for the purpose of reaching or carrying out a settlement agreement; (2) the public interest, convenience and necessity would be served by approval of the Agreement because it would terminate all proceedings relative to Channel 280C3, and thus will hasten inauguration of a new commercial broadcast service to Ilwaco, Washington more quickly than would otherwise be possible; and (3) other than the consideration stated in each Agreement, there is no direct or indirect consideration to be paid to any party by Schafbuch.

As demonstrated herein and in the attached Agreement, this universal settlement of the Ilwaco, Washington FM proceeding meets the requirements of the Communications Act and the Commission's Rules. A grant of this waiver request and approval of the Settlement Agreement will conserve scarce Commission resources and allow Ilwaco, Washington to obtain a new, commercial FM service in a timely fashion.

WHEREFORE, it is urged that this Waiver Request, the Joint Request for Approval of Settlement Agreements and the Settlement Agreements be Granted, that the consideration contemplated by the Settlement Agreements be Approved, that the application of Farmer BE DISMISSED WITH PREJUDICE, and that the application of Richard M. Schafbuch for a new FM Broadcast Station at Ilwaco, Washington BE GRANTED.

Respectfully submitted,

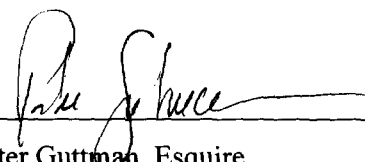
**Elizabeth Farmer**

By:   
Richard J. Hayes, Jr., Esquire  
Her Attorney

Dated: Jan 26, 1998

Richard J. Hayes, Jr.  
Attorney at Law  
13809 Black Meadow Road  
Spotsylvania, Virginia 22553  
  
(540) 972-2690

**Richard M. Schafbuch**

By:   
Peter Guttman, Esquire  
His Attorney

Dated: January 29, 1998

Peter Guttman  
Pepper & Corazzini, LLP  
1776 K Street, NW – Suite 200  
Washington DC 20006  
  
(202) 296-0600

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT**

**EXHIBIT A**

**SETTLEMENT AGREEMENT**

## SETTLEMENT AGREEMENT

**THIS SETTLEMENT AGREEMENT** dated this 26 day of January, 1998, by and between Richard M. Schafbuch, an individual and a resident of Oregon ("Schafbuch") and Elizabeth Farmer, Personal Representative of the Estate of Charles Farmer, a resident of Oregon ("Farmer")./1

**WHEREAS**, Schafbuch is an applicant before the Federal Communications Commission ("FCC") for a construction permit for a New FM Broadcast Station on Channel 280C3 at Ilwaco, Washington (FCC File Number BPH-920521MI); and,

**WHEREAS**, Farmer is an applicant before the FCC for a construction permit for a New FM Station on Channel 280C3 at Ilwaco, Washington (FCC File No. BPH-920518MA); and,

**WHEREAS**, both applications are mutually exclusive and only one of them can be granted by the FCC; and

**WHEREAS**, Schafbuch and Farmer have entered-into a Settlement Agreement which will result in the dismissal, with prejudice, of the Farmer application and a grant of the Schafbuch Application and provide for a universal settlement of the conflict for Channel 280C3 at Ilwaco, Washington; and,

**WHEREAS**, this universal settlement agreement will result in: (1) the commencement of a new local broadcast service on FM Channel 280C3 at Ilwaco, Washington (the "FM Station") at the earliest possible time; and (2) the conservation of scarce adjudicatory resources at the FCC, thus serving the public interest, convenience and necessity.

**NOW, THEREFORE**, Schafbuch and Farmer agree as follows:

1. **FCC Approval**. Schafbuch and Farmer agree and understand that this Settlement Agreement is subject to the Communications Act of 1934, as amended, and the Rules and Regulations of the FCC. The approval of the FCC of this Settlement Agreement is an express condition precedent to the rights and obligations

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1/ By "Order", released September 30, 1997, Administrative Judge Edward Luton Granted a Petition for Leave to Amend and Accepted an Amendment to the Application of Charles Farmer to substitute Elizabeth Farmer, Personal Representative of the Estate of Charles Farmer, as the applicant in this proceeding.

of the parties to consummate this transaction. The parties agree and understand that all Orders from the FCC, including Orders approving the Settlement Agreements and granting the Schafbuch Application, shall have become "Final" which shall be defined as being no longer subject to administrative or judicial review nor subject to any informal objections or petitions to deny.

2. **Dismissal of the Farmer Application.** In exchange for the consideration described in this Agreement, Farmer agrees to request the FCC to dismiss, with prejudice, her application at Ilwaco, Washington (FCC File No. BPH-920518MA) and to grant the Schafbuch application at Ilwaco, Washington (FCC File Number BPH-920521MI). Farmer shall join with Schafbuch in the execution and filing with the FCC of a mutually satisfactory "Joint Request for Approval of Settlement", and will take no action whatsoever which would tend to delay or defeat the granting of said "Joint Request" and the granting of Schafbuch's application at Ilwaco.

3. **Schafbuch's Payment to Farmer.** In consideration of the promise made by Farmer in the preceding Section, and upon Finality as defined in paragraph one, above, Schafbuch shall pay to Farmer the sum of Thirty Six Thousand and 00/100 Dollars (\$36,000.00). The entire amount of this payment will be deposited, at the time this Settlement Agreement is executed by the Parties, into an interest-bearing escrow account, the form of which is attached as **Exhibit One** and payment will be made to Farmer by the Escrow Agent within five (5) days of "finality" of the FCC's Order approving the Settlement Agreement between Schafbuch and Farmer.

4. **Joint Request for Approval of Settlement.** Within five (5) calendar days of the date the Settlement Agreement has been executed and, in any case prior to January 30, 1998, the parties will file a "Joint Request for Approval of Settlement" with the FCC seeking its approval of the Settlement Agreement, approval of the settlement payment, the dismissal of the application of Farmer at Ilwaco, Washington, with prejudice, and the grant of the Schafbuch application at Ilwaco, Washington. Farmer shall be responsible for producing drafts of the Settlement Agreement and the "Joint Request" for review by Schafbuch but each party will bear its own legal expenses in connection with the review of the Settlement Agreement and the "Joint Request". Each party will extend its fullest cooperation to the other party and to the FCC in order to secure FCC approval of these Settlement Agreements at the earliest possible time.

5. **Default.** With respect to the payment to be made by Schafbuch to Farmer upon approval of this Settlement Agreement, time is of the essence. In the event that Schafbuch does not make the payment to Farmer in the manner and within the time period stated in this Settlement Agreement, such non-payment shall be deemed a material default hereunder.

6. **47 C.F.R. Section 73.3625 Compliance.** The parties agree and acknowledge that the terms of this Settlement Agreement are governed by Section 73.3625 of the FCC's Rules. That Rule requires that the parties make certain representations to the FCC in order for the FCC to take favorable action on their request for approval of this Agreement. Accordingly, under penalty of perjury, Farmer and Schafbuch represent to each other and to the FCC that:

6.1 **Applications Not Filed for Purposes of Settlement.** Their respective applications were not filed for the purpose of reaching and/or carrying out a Settlement Agreement;

6.2 **Settlement Will Serve the Public Interest.** The public interest, convenience and necessity would be served by the effectuation of this Settlement Agreement because it would terminate all proceedings with respect to Channel 280C3 at Ilwaco, Washington thereby permitting the commencement of the new FM broadcast service for Ilwaco and its surrounding area, allowing for a conservation of scarce adjudicatory resources at the FCC; and

6.3 **No Other Consideration.** Other than the consideration stated in this Agreement, there is no consideration, direct or indirect, to be paid or promised to be paid by Schafbuch to seek the dismissal of Farmer's application at Ilwaco, Washington.

7. **Effect of Disapproval of Settlement Agreement.** In the event that the Commission refuses to approve this Settlement Agreement, both Farmer and Schafbuch shall have the right to continue to prosecute their respective applications and take such actions as they deem necessary as if this Agreement had never been executed. In the event the Commission does not approve this Settlement Agreement, the parties will attempt to renegotiate this Agreement, in good-faith, to meet any Commission objections in a manner which preserves, as closely as possible, the terms of the Agreement. Should Commission's decision become final not to approve this Settlement between the parties, Schafbuch will be entitled to a refund of all of the monies held in the Escrow Account. Should Farmer breach this Agreement, Schafbuch will be entitled to the return of all monies held in the Escrow Account in addition to specific performance provided in paragraph 10, provided that Schafbuch is not in breach of this Agreement. Should Schafbuch breach this Agreement, subsequent to FCC approval, then Farmer will be entitled receive the funds in the Escrow Account, together with any damages, provided that Farmer is not in breach of this Agreement. Prior to FCC approval, Farmer and Schafbuch will be entitled to damages and to specific performance as provided in paragraph 10.



8. **Qualifications of the Parties.** Schafbuch represents and warrants that he is legally, technically, financially and otherwise qualified to obtain a construction permit for a new FM station at Ilwaco, Washington and he does not know of any facts which would disqualify him under the Communications Act of 1934, as amended, from owning and operating the Ilwaco radio broadcast station on Channel 280C3. Schafbuch further warrants and represents that, should any such fact come to his attention, he will promptly notify Farmer and use his best efforts to attempt to remove such disqualification.

9. **Requisite Authority.** Schafbuch and Farmer affirm that each has the requisite individual legal and mental capacity to enter into this Agreement and to be bound in accordance with its terms.

10. **Specific Performance.** As the material terms and provisions of this Agreement provide for the unique rights to construct and operate the only broadcast station licensed to Ilwaco, Washington and there would be no other adequate remedies at law, the rights of the parties hereto, including, but not limited to, Farmer's rights in the event of a default by Schafbuch in the payment of the amounts provided in Section 3, may be enforced by the equitable remedy of specific performance. Accordingly, the parties waive the defense that an adequate remedy at law would be sufficient to bring the action for specific performance.

11. **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns, and is enforceable against each of them in accordance with its terms. An assignment shall not relieve the parties of their obligations to guarantee the prompt performance of any and all of their respective obligations thereunder.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon to the extent that they are not preempted by Federal Law and Regulation, in which case the latter shall apply.

13. **Notice.** Any notice required hereunder shall be in writing and any payment, notice or other communications shall be deemed given when delivered personally, or mailed by certified mail or Federal Express Service, postage prepaid, with return receipt requested, to individuals or entities specified in *Exhibit Two*, attached hereto:

13.1 **Alternate Addresses.** Notice, as provided by this Section, may be given to any other person or party, as any party hereto may in the future designate, in writing, upon due notice of the other party(ies).

13.2 **Date of Notice, Action.** The postal receipt for deposit with the U.S. Mail or courier service specified herein shall establish the date of such notification or communication.

14. **Entire Agreement.** The foregoing constitutes the entire and whole agreement of the parties, and may not be modified, amended or changed in any way unless in writing, signed by all parties hereto. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof, or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

15. **Waiver.** Failure of any party to complain of any act or omission on the part of any other party in breach of this Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by any party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a consent to any subsequent breach of the same or other provisions.

16. **Severability.** If any provision, clause or part of this Agreement or the application thereof under certain circumstances is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby; *provided*, however, that in the event the FCC fails to approve the total consideration to be paid and afforded to Farmer pursuant to this Agreement or fails to approve without material modification a condition of the Agreement, then, subject to paragraph 7 hereof, this Agreement shall terminate and the parties shall return to *status quo*. This agreement contemplates complete FCC approval.

17. **Expenses.** Each party shall bear its own expenses for the review of this Agreement and all supporting documents.

18. **Counterparts and Effective Date.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original.

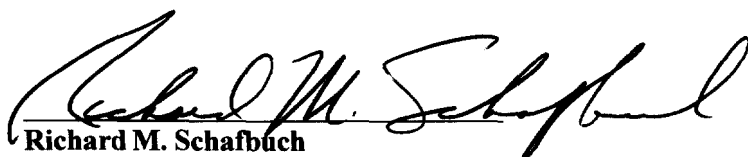
19. **Headings.** The headings of the sections and paragraphs of this Agreement are for convenience and reference only.

20. **Further Assurances.** The parties hereto respectively agree to take such other actions and to execute and deliver such further instruments, consents, amendments, applications or other documents as may be reasonably necessary to assure the full and effective satisfaction of the intent, terms and conditions of this Agreement.

21. **Assurance.** The parties hereto agree to execute and deliver any additional or supplemental documents as may be necessary or required to effectuate the purposes of this Agreement.

23. **Construction of Agreement.** This Agreement is the product of negotiation and preparation by, between and among Schafbuch and Farmer and their respective attorneys. Accordingly, the parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another, and shall be construed accordingly.

IN WITNESS WHEREOF, the parties hereby have caused their duly authorized representatives to execute this Agreement as of the date and year first above written.



Richard M. Schafbuch

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Elizabeth Farmer,  
Personal Representative of the  
Estate of Charles Farmer

19. **Headings**. The headings of the sections and paragraphs of this Agreement are for convenience and reference only.

20. **Further Assurances**. The parties hereto respectively agree to take such other actions and to execute and deliver such further instruments, consents, amendments, applications or other documents as may be reasonably necessary to assure the full and effective satisfaction of the intent, terms and conditions of this Agreement.

21. **Assurance**. The parties hereto agree to execute and deliver any additional or supplemental documents as may be necessary or required to effectuate the purposes of this Agreement.

23. **Construction of Agreement**. This Agreement is the product of negotiation and preparation by, between and among Schafbuch and Farmer and their respective attorneys. Accordingly, the parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another, or the attorneys for one party or another, and shall be construed accordingly.

IN WITNESS WHEREOF, the parties hereby have caused their duly authorized representatives to execute this Agreement as of the date and year first above written.

---

Richard M. Schafbuch

*Elizabeth Farmer personal Rep. C. Farmer Estate*  
Elizabeth Farmer,  
Personal Representative of the  
Estate of Charles Farmer

**EXHIBIT ONE**

**ESCROW AGREEMENT**

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT, has been executed as of this 26 day of January, 1998 by and between Richard M. Schafbuch, a resident of Oregon, and Elizabeth Farmer, Personal Representative of the Estate of Charles Farmer ("Parties") and Richard J. Hayes, Esq. And Peter Gutmann, Esq., acting as Escrow Agents ("Escrow Agent").

## WITNESSETH

**WHEREAS**, the Parties have entered into a Settlement Agreement dated 1/26, 1998 regarding a new FM facility at Ilwaco, Washington (the "Agreement") whereby, subject to the approval of the Federal Communications Commission, Schafbuch would obtain a grant of his application for the new FM station and Farmer, the remaining applicant, would request the FCC to dismiss her application for the same facility in exchange for consideration to be paid by Schafbuch to Farmer in the amount of Thirty Six Thousand Dollars (\$36,000.00) ("Settlement Price").

**WHEREAS**, the parties desire an Escrow Agent to hold and Escrow Agent is willing to hold the Settlement Price of Thirty Six Thousand Dollars (\$36,000.00) as provided for in the Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

**1. Receipt of Escrow Deposit.** By signature below, Escrow Agent acknowledges receipt of funds from Schafbuch totaling THIRTY SIX THOUSAND DOLLARS (\$36,000.00) the Escrow Deposit ("Escrow Deposit"). Escrow Agent agrees to hold and to disburse the Escrow Deposit only in accordance with this Agreement.

**2. Investment of Escrow Deposit.** The Escrow Deposit shall be invested by Escrow Agent in interest bearing bank accounts or certificates of deposit of federally insured financial institutions or in treasury bills or other investments as may be directed by the instructions of the Parties. All interest earned on the Escrow Deposit shall be paid to Schafbuch upon disbursement of the Escrow Deposit by the Escrow Agent.

### **3. Release from Escrow Deposit.**

Within five (5) business days of receipt from Communications Counsel for Schafbuch and Farmer confirming Finality of the FCC's Order granting the Settlement Agreement between Schafbuch and Farmer, and Finality of the Grant of the Schafbuch Application, the Escrow Agent shall pay over to Farmer the entire principal amount of the Escrow Deposit to Farmer and shall pay all of the accrued interest over to Schafbuch. The approval of the FCC of this Settlement Agreement is an express condition precedent to the rights and obligations of the parties hereunder. The parties agree and understand that all Orders from the FCC, including Orders approving the Settlement Agreements, shall have become "Final" which is defined as being no longer subject to administrative or judicial review nor subject to any informal objections or petitions to deny.

**3.1 Otherwise if To Farmer.** If for reasons not specified in paragraph 3, above, Farmer believes that she is entitled to receive the Escrow Deposit, pursuant to the terms of the Settlement Agreement, then Farmer shall so notify the Escrow Agent in writing (the "Farmer Notice"). After receipt of the Farmer Notice, the Escrow Agent shall promptly forward a copy thereof to Schafbuch. If the Escrow Agent has not received a written notice of objection from Schafbuch to the payment of the Escrow Deposit to Farmer within fifteen (15) days after the date on which the Escrow Agent sent a copy of the Farmer Notice to Schafbuch, the Escrow Agent shall deliver the Escrow Deposit, together with all accrued interest to Farmer immediately following the expiration of such 15-day period.

**3.2 Otherwise if To Schafbuch.** If for reasons not specified in paragraph 3, above, Schafbuch believes that he is entitled to receive the Escrow Deposit, then Schafbuch shall so notify the Escrow Agent in writing (the "Schafbuch Notice"). After receipt of the Schafbuch Notice, the Escrow Agent shall promptly forward a copy thereof to Farmer. If the Escrow Agent does not receive a written notice of objection from Farmer to the payment of the Escrow Deposit to Schafbuch within fifteen (15) days after the date on which the Escrow Agent sent a copy of the Schafbuch Notice to Farmer, the Escrow Agent shall deliver the Escrow Deposit to Schafbuch immediately following the expiration of such 15-day period. The Escrow Agent shall deliver all accrued interest to Schafbuch at that time.

As provided in the Settlement Agreement, in the event the Commission does not approve this Settlement Agreement, the parties will attempt to renegotiate this Agreement, in good-faith, to meet any Commission objections in a manner which preserves, as closely as possible, the terms of the Agreement. Should Commission's decision become final not to approve this Settlement between the parties, Schafbuch will be entitled to a refund of all of the monies held in the Escrow Account.

**3.4. Otherwise To Schafbuch and Farmer** Notwithstanding any other provision of this Escrow Agreement to the contrary, the Escrow Agent shall at any time disburse all or any portion of the Escrow Deposit and the interest accrued thereon in accordance with the joint written instructions executed by each of Schafbuch and Farmer.

#### **4. Duties of the Escrow Agent.**

##### **4.1. Duties in General.**

All actions required of the Escrow Agent hereunder will require the joint action of Richard J. Hayes, Jr., Esq. and Peter Guttman, Esq. or the action by one of them with the express agreement of the other.

**4.1.1.** The Escrow Agent undertakes to perform only such duties as are expressly set forth herein (and required by applicable law), which the parties agree are ministerial in nature. If in doubt as to its duty and responsibility hereunder, the Escrow Agent may consult with counsel of its choice and shall be protected in any action taken or omitted in good faith in connection with the advice or opinion of such counsel.

**4.1.2.** Subject to Section 7 herein, if the Escrow Agent should become involved in litigation with respect to this Escrow Agreement for any reason, said Escrow Agent is hereby authorized to deposit the Escrow Deposit with the Clerk of such court in which such litigation is pending, or to interplead all interested parties in any court of competent jurisdiction and to deposit with the Clerk of such court the Escrow Deposit. Upon the happening of either of the above, the Escrow Agent shall stand fully relieved and discharged of any further duties hereunder.



**4.2 Exculpation.** Except for the Escrow Agent's own willful misconduct, bad faith or gross negligence; (i) the Escrow Agent shall have no liability of any kind whatsoever for the performance of any duties imposed upon the Escrow Agent under this Escrow Agreement or for any act or omission hereunder; (ii) the Escrow Agent shall not be responsible for any of the acts or omissions of the parties hereto; (iii) the Escrow Agent shall not be liable to anyone for damages, losses or expenses arising out of this Escrow Agreement; and (iv) the Escrow Agent may rely and/or act upon any written instrument, document or request believed by the Escrow Agent in good faith to be genuine and to be executed and delivered by the proper person, and may assume in good faith the authenticity, validity and effectiveness thereof and shall not be obligated to make any investigation or determination as to the truth and accuracy of any information contained therein.

**4.3. No Additional Duties.** The Escrow Agent shall have no duties except those that are expressly set forth herein, and it shall not be bound by any notice of a claim or demand hereunder, or any waiver, modification, amendment, termination or rescission of this Escrow Agreement, unless received in writing.

**4.4. Miscellaneous.** The Escrow Agent may execute any powers or responsibilities hereunder and exercise any rights hereunder either directly or by or through their agents or attorneys. The Escrow Agent shall not be responsible for and shall not be under a duty to examine or pass upon the validity, binding effect, execution or sufficiency of the Escrow Agreement or any agreement amendatory or supplemental hereto.

**5. Indemnification of the Escrow Agent.** In consideration of acceptance of the appointment as Escrow Agent, Schafbuch and Farmer jointly and severally agree (i) to indemnify and hold the Escrow Agent harmless as to any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct by the Escrow Agent to any person by reason of his having accepted the same or in carrying out any of the terms hereof, and (ii) to reimburse the Escrow Agent on request for all his reasonable attorney's fees and other reasonable costs and expenses incurred by him in connection with carrying out his duties hereunder.

**6. Resignation of Escrow Agent.** The Escrow Agent, and any successor Escrow Agent, may resign at any time as Escrow Agent hereunder by giving at least fifteen (15) business days written notice to Schafbuch and Farmer. Upon such resignation and the appointment of successor Escrow Agent, the resigning Escrow Agent shall be absolved from any and all liability in connection with the exercise of power and duty as Escrow Agent hereunder. Upon their receipt of notice of resignation from the Escrow Agent, Schafbuch and Farmer, shall use their reasonable

best efforts jointly to designate a successor Escrow Agent. If the parties do not agree upon a successor Escrow Agent within fifteen (15) business days after the receipt by the parties of the Escrow Agents' resignation notices, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or other appropriate relief and any such resulting appointment shall be binding upon all parties hereto. By mutual agreement, the parties shall have the right at any time upon not less than seven (7) business days written notice to terminate the appointment of the Escrow Agent. The Escrow Agent so terminated shall continue to act as Escrow Agent until a successor is appointed and qualified to act as Escrow Agent.

**7. Dispute Resolution.** If a dispute arises concerning a party's entitlement to some or all of the Escrow Deposit, the parties hereby agree to submit such dispute to binding arbitration. The rules and procedures of the American Arbitration Association then in effect shall govern the proceedings conducted by the arbitrator. The parties agree that time is of the essence in a dispute over the Escrow Deposit, and the parties hereby agree to use their reasonable best efforts to expedite the resolution of any disputes. The prevailing party shall be entitled to recover its reasonable costs (including attorneys' fees) incurred in connection with such dispute. The venue for such arbitration shall be the American Arbitration Association in Oregon.

**8. Notices.** All notices, requests, demands, and other communications pertaining to this Agreement shall be in writing and shall be deemed duly given when delivered personally (which shall include delivery by FedEx or other nationally recognized, reputable overnight courier service that issues a receipt or other confirmation of delivery) to the party for whom such communication is intended or three (3) business days after the date mailed by certified or registered U.S. mail, return receipt requested, postage prepaid, in accordance with Exhibit One to The Settlement Agreement or to such other address as such party shall specify by written notice to the other parties hereto. Any notice sent to Escrow Agent shall also be sent to the other party to this Agreement.

**9. Assignment.** Farmer and Schafbuch may assign their rights under this Agreement to the same extent they are permitted to assign their rights and obligations under the Purchase Agreement.

**10. Miscellaneous.** This Escrow Agreement, and with respect to Schafbuch and Farmer, the Settlement Agreement, embodies the entire agreement and understanding of the parties concerning the Escrow Deposit. This Escrow Agreement may be amended only by a writing signed by the party against whom enforcement is sought. The headings in this Escrow Agreement are intended solely for convenience or reference and shall be given no effect in the construction or interpretation of this Escrow Agreement. This Escrow Agreement shall be governed by and

construed in accordance with the laws of the State of Oregon, without regard to the choice of law rules utilized in that jurisdiction. This Escrow Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

To evidence their agreement, the parties have caused this Escrow Agreement to be executed on the date first written above.

**ATTEST:**

**Richard M. Schafbuch**

BY: 

**RICHARD M. SCHAFBUCH**

**ATTEST:**

**Elizabeth Farmer**

BY: \_\_\_\_\_

**ELIZABETH FARMER, PERSONAL REPRESENTATIVE OF THE  
ESTATE OF CHARLES FARMER**

**ATTEST:**

BY: 

**RICHARD J. HAYES, JR., ESCROW AGENT**

**ATTEST:**

BY: 

**PETER GUTMANN, ESCROW AGENT**

construed in accordance with the laws of the State of Oregon, without regard to the choice of law rules utilized in that jurisdiction. This Escrow Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

To evidence their agreement, the parties have caused this Escrow Agreement to be executed on the date first written above.

**ATTEST:**

**Richard M. Schafbuch**

BY: \_\_\_\_\_  
RICHARD M. SCHAFBUCH

**ATTEST:**

**Elizabeth Farmer**

BY: Elizabeth Farmer personal Rep. of C. Farmer Estate  
ELIZABETH FARMER, PERSONAL REPRESENTATIVE OF THE  
ESTATE OF CHARLES FARMER

**ATTEST:**

BY: Hayes  
RICHARD J. HAYES, JR., ESCROW AGENT

**ATTEST:**

BY: \_\_\_\_\_  
PETER GUTMANN, ESCROW AGENT

**EXHIBIT TWO**

**NOTICES**

**EXHIBIT TWO**

**NOTICES**

**IF TO FARMER:**

Elizabeth Farmer  
133 Grand Avenue  
Astoria, Oregon 97103

With a Copy To:

Richard J. Hayes, Jr.  
Attorney at Law  
13809 Black Meadow Road  
Spotsylvania, Virginia 22553

**IF TO SCHAFBUCH:**

Richard M. Schafbuch  
4444 West Burnside Road  
Portland, Oregon 97210

With a copy to:

Peter Gutmann, Esq.  
Pepper and Corazzini  
1776 K Street NW  
Suite 200  
Washington DC 20006